

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6810 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MUKESH VINAYAK MASARWALA

Versus

EXECUTIVE ENGINEER, BLDG. & CONSTRUCTION DEPT. &
ORS.

Appearance:

MR RN SHAH for Petitioner

MR MUKESH PATEL for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/02/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. Challenge is made by the petitioner, by this Special Civil Application to the action of the respondents to terminate his services.

3. It is not in dispute that the petitioner was

appointed on daily wages by the respondents. The learned counsel for the respondents, Shri Mukesh Patel, raised a preliminary objection that this petition is not maintainable as the petitioner has concealed the material fact from this Court. It has further been contended that the petitioner has deliberately made a false statement before this Court and by making concealment of fact and false statement, he got an order of Rule nisi in this case.

4. The learned counsel for the petitioner submitted that though the petitioner has not disclosed the fact that he had approached the Labour Court against the action of the respondents to terminate his services but it is not a deliberate concealment.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. In para VIII of the petition, the petitioner states that, "he has not filed any other petition/application/appeal either before this Hon'ble Court or before the Hon'ble Supreme Court of India or in any other Court/Tribunal in India with regard to the subject matter of this case". Further, in para IX of the petition, the petitioner states that, "the petition filed before this Hon'ble Court is the only equally efficacious remedy available to him and the reliefs that may be granted by this Hon'ble Court would be adequate and complete in themselves". So the challenge is made on the ground of violation of some statutory provision in making termination and under the same statute, remedy has been provided for redressal of the said grievance. It is a case where the petitioner knew well that he had remedy to approach the Labour Court against the action of the respondents to terminate his services without complying the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act 1947'). The petitioner has approached to the Labour Court before filing this Special Civil Application in this Court. However, it is a different matter that in the month of May 1986, he withdrew that application, i.e. after the issue of Rule in this case. It is a case where the petitioner filed the writ petition before this Court when he has already availed the alternative remedy. It is a settled law that where the petitioner has alternative efficacious remedy available under the statute, the writ petition is not maintainable. In the present case, not only the alternative remedy was available to the petitioner, but he has availed of the said remedy and as such, this writ petition is not maintainable. A

reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of Bombay Metropolitan Region Development Authority, Bombay, v. Gokak Patel Volkart Ltd. & Ors., reported in in JT 1995(1) SC 155. The relevant portion of the said decision reads as under:

"We are of the view that the point taken by the appellant is of substance. This is a case, where there is not only the existence of an alternative remedy but the writ petitioner actually had availed of that remedy. The writ-petitioner's appeal before the Statutory Authority was pending. In that view of the matter this writ petition should not have been entertained."

So it is correct to contend on the part of the respondents that the petitioner has deliberately made a false statement in para VIII & IX of the Special Civil Application.

7. Otherwise also, this Special Civil Application deserves to be dismissed only on the ground of concealment of material facts by the petitioner. The petitioner has suppressed the fact from this Court that he has already availed of alternative remedy by filing application before the Labour Court. Not only this, the petitioner has made false statement in para VIII of the Special Civil Application that he has not filed any other petition/application/appeal in any other Court/Tribunal in India with regard to the subject matter of this case. The petitioner admitted in rejoinder that he filed an application before the Labour Court in the very subject matter. The petitioner has concealed serious material fact from this Court and he got the order of admission of the petition. In case this fact would have been disclosed before this Court, then certainly, this petition would not have been admitted and the same would have been dismissed at the very stage. He withdrew that case before the Labour Court only when the present petition has been admitted. This dubious and deceitful conduct of the petitioner disentitle him from seeking any relief on merits in the case.

8. In the proceedings under Article 226 of the Constitution of India, initiated for attracting the extraordinary jurisdiction of this Court, it is utmost important that the petitioner should come forward with clean hands. This Court cannot encourage the idea that a person is entitled to adopt dubious or dishonest or fraudulent means and make false averments while

submitting writ petition in this Court and further when his falsehood is exposed by the other side, putting the correct facts before this Court, it would not be proper to allow the petitioner to make the submissions on the merits of the case. It would be laying down a very dangerous principle in the conduct of human affairs if Courts of law are allowed to be flooded with petitions based on false averments. This Court can help, in its extra ordinary jurisdiction, only to those persons who approach this Court with clean hands and if in a given case, this Court finds that the conduct of the petitioner is not honest and free from deceit, the Court may decline to give any relief to the petitioner. A person who adopts dubious means must suffer the consequences of his conduct. The petitioner was under an obligation to the Court to make full and correct disclosure of all the material facts in a candid manner, which he has not done in the present case. Contrary to it, the petitioner suppressed the material facts and thereby obtained Rule nisi. In view of these facts, this Court is not under any obligation to decide the matter on merits.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)